

STATE OF MICHIGAN
COURT OF APPEALS

ELIZABETH SWOPE,

Plaintiff-Appellee,

v

VIDICAN INVESTMENT PROPERTIES, L.L.C.
and JOHN VIDICAN,

Defendants-Appellants,

and

WILFRED BURKE and BB ASSOCIATES, INC.,
d/b/a BBA ASSOCIATES,

Defendants.

UNPUBLISHED

April 27, 2006

No. 260915

Monroe Circuit Court

LC No. 03-017033-CZ

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendants Vidican Investments Properties (VIP) and John Vidican appeal as of right from a circuit court order granting plaintiff's motion for summary disposition on her breach of contract claim. We affirm.

Plaintiff entered into a land contract to purchase real property subject to existing easements. The contract provided that upon payment of all sums due under the contract, the seller was required

[t]o execute and deliver to Purchaser . . . a good and sufficient warranty deed conveying title to the land, subsection to abovementioned restrictions and easements . . . but *free from all other encumbrances*, except as such as may be herein set forth or shall have accrued since the date hereof through the acts or omissions of persons other than Seller or his assigns. [Emphasis added.]

The land contract vendor later sold her interest in the property to VIP, which subsequently granted Vidican a private road easement over the property, as well as sanitary sewer, water main, storm sewer, and public utilities easements. The trial court ruled that the easements violated the covenant against encumbrances and ordered them removed.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). "The interpretation of a contract is also a question of law this Court reviews de novo on appeal, including whether the language of a contract is ambiguous and requires resolution by the trier of fact." *DaimlerChrysler Corp v G-Tech Professional Staffing, Inc*, 260 Mich App 183, 184-185; 678 NW2d 647 (2003).

In general, an encumbrance is any "claim or liability that is attached to property or some other right that may lessen the value, such as a lien or mortgage; any property right that is not an ownership interest." Black's Law Dictionary (7th ed, 1999). It is anything that constitutes a burden on the title. *Post v Campau*, 42 Mich 90, 94; 3 NW 272 (1879).

"An easement is the right to use the land of another for a specified purpose." *Schadewald v Brulé*, 225 Mich App 26, 35; 570 NW2d 788 (1997). "An easement does not displace the general possession of the landowner, but merely grants the holder of the easement qualified possession only to the extent necessary for enjoyment of the rights conferred by the easement." *Id.* While the existence of an easement on the property conveyed may, but does not necessarily, affect marketable title, *Madhavan v Sucher*, 105 Mich App 284, 288-289; 306 NW2d 481 (1981), "[a] right to an easement of any kind is an encumbrance." *Lavey v Graessle*, 245 Mich 681, 683; 224 NW 436 (1929). Accord *Young v Thendara, Inc*, 328 Mich 42, 50-51; 43 NW2d 58 (1950). This is true even absent a showing that the encumbrance diminished the market value of the property, *Rhodes v Astro-Pac, Inc*, 41 NY2d 919, 920; 363 NE2d 347; 394 NYS2d 623 (1977), and even though the easement may be beneficial. *Siegel v Shaw*, 337 Mass 170, 172; 148 NE2d 393 (1958). Therefore, trial court properly determined that an easement is an encumbrance and that VIP breached the land contract by creating the easements.

Defendants contend that the trial court erred in granting summary disposition before discovery was complete. A grant of summary disposition is premature if made before discovery on a disputed issue is complete. *Mackey v Dep't of Corrections*, 205 Mich App 330, 333; 517 NW2d 303 (1994). Defendants sought to conduct discovery to show that the easements increased the value of the land. As noted above, whether an easement enhances the market value of property is immaterial to the issue whether it is an encumbrance. Because the value of the land, with or without easements, was not a material issue of fact to plaintiff's breach of contract claim, the trial court properly granted plaintiff's motion.

Affirmed.

/s/ Helene N. White
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot